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Chair

Mr. Dan Ruimy

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● (1905)

[*English*]

The Chair (Mr. Dan Ruimy (Pitt Meadows ... ple Ridge, Lib.)): Hello, and welcome, everybody, to the open-mike portion. We've been on a long road trip.

What's going to happen today is we have nine names, and if that doesn't change, then we'll allow an extra minute, so you'll have three minutes.

A voice: [*Inaudible—Editor*]

The Chair: No. A second topic? You have three minutes, and you can talk about whatever you want in your three minutes. How's that?

You're going to come up and do your three minutes. When you see my hand going up, that means you have 15 seconds left. After the 15 seconds are up, your mike will stop, you'll get cut off. Make sure you time yourself well.

Everything you say tonight is being recorded as part of our study, so it's very important. The whole point of coming out on this road trip is to hear from not only the associations, but from the individuals out there, because we know how delicate this topic is when it comes to copyright. It's a complex issue. We wanted to make sure that we gave people the opportunity.

Having said that, I'm going to call up our first person, Dr. Sandy Greer.

Dr. Sandy Greer (As an Individual): Thank you very much for this opportunity to speak.

Since witnessing the afternoon session, I'm just winging it, and I've totally changed my notes because I want to respond to what I believe are some distorted perceptions that the educational sector appears to have. One of them is about the scholarly, rather than literary, material that is used at universities and colleges.

I have been a freelance journalist since 1982, and worked many years as a freelance journalist. I also produced, wrote, and researched a documentary film. All of my life's work has been on social and environmental justice, and the major themes have been in relation to our indigenous peoples, to go to them and listen to their stories at a time when, for many years, they were mostly being ignored by the news media.

I also witnessed the systems in my society, all of which were systemically and culturally racist; and a lot of my writings were to expose those largely invisible types of racism that we need to recognize. I used media literacy as a tool, and I did workshops all over North America, with educators, about how to inform young people about accurate representations of our indigenous peoples.

Now I want to do books on my life's work, some of which would be anthologies.

I've visited all levels of schools to do presentations in classrooms. I can tell you that universities and colleges, as well as other grade levels in high schools, sometimes elementary schools, use journalistic materials. That was overlooked today, but I'm speaking here mostly as a journalist who now wants to use those investigative DNA cells to continue to speak to our cultural history and write books.

I am so upset by the fact that most of my royalties, both as a writer and a filmmaker, have disappeared since 2012, because the fair dealing is totally not fair, which was acknowledged today by some people. Insights were provided to you. The truth is the educational institutions have been relied upon by professional creators like me for a major part of their income in order to still have a livelihood. But this is now disappearing, deteriorating, and threatening what I can earn as I produce books to contribute to cultural history. This also threatens younger generations of cultural producers, and a well-informed society, and a healthy democracy. It's all those layers—

The Chair: Thank you very much.

We are going to move on to Dr. Jean Dryden.

Dr. Jean Dryden (As an Individual): Thank you.

I am advocating for an overhaul of the crown copyright provision. The crown copyright provision in section 12 of the act contains just 85 words, but despite its brevity, it's been called the legislative monstrosity.

Crown copyright in Canada has been studied many times. I have here a study from 1977, 41 years ago, recommending, "That the Crown review its interests in the acquisition, control, administration and assertion of copyright." Since then, other studies have noted its confusing nature and the need for significant revisions, but nothing has happened.

Confusion arises in many areas. For example, what is the precise nature of the royal prerogative? Does crown copyright apply to works produced by foreign governments if they're being used in Canada? Should works that are essential to a well-informed citizenry such as statutes, judicial decisions, and legislative debates be removed from the scope of crown copyright? These are but a few of the matters that need clarification.

A more pernicious problem exists. Section 12 is the only place in the act where there's potential for perpetual copyright. Crown copyright lasts for 50 years from the year of publication, but if a work is never published, its copyright will never expire. This applies to the millions of unpublished works created by federal, provincial, and territorial bureaucrats and preserved in Canada's archives.

Copyright was never intended to last forever, and this last preserve of perpetual copyright must be removed from our act. Time does not permit a discussion of the options for fixing this. The point is, crown copyright is long overdue for a comprehensive rethink. It's time to transform this outdated monstrosity into a measure that serves the public interest in the digital age. It's time to do what was recommended in 1977.

Since you've given me an extra minute, Mr. Chair, I'm on to topic two now, which is term extension. When copyright expires, works enter the public domain and can be used freely. A robust public domain is an essential feature of the copyright system. The public domain provides a rich source of raw material for new creative works. Overlong terms of copyright protection inhibit the growth of the public domain to the detriment of the public interest.

Proponents of term extension argue that it presents a greater incentive for authors to create new works; however, studies have produced no credible evidence that term extension results in increased creation, particularly if the authors are already dead.

Term extension does nothing to encourage the creation of new work. It also impedes the entry of works into the public domain. Canada's current terms of copyright protection are compliant with the minimum standards set out in the Berne Convention. To extend our term provisions further presents a massive obstacle to the use of Canada's documentary heritage in creating new works. No term extension.

Thank you.

● (1910)

The Chair: All right, we're going to move on to Mr. Andrew Oates.

Mr. Andrew Oates (As an Individual): Hello.

It's difficult for one act to cover all of the things that we've heard about, even just what with what we heard about today, with the producers ranging from art centre authors to billion-dollar international corporations, and the consumers ranging from individuals, to academic consortia and their student bodies, to large corporations. I've been involved through my career with software development, notably for libraries, and also dealing with publishers' groups from time to time.

In my experience in the software world, most intellectual property is overvalued by the creators, partly because the idea is not a marketable thing and you need a lot of people and help— publishers, editors, distributors, and so on—to give value to that. Having said that, I think that IP creators should be rewarded for their efforts, but fairly rewarded in the view of all these other costs, including the cost to society of enforcing copyright. Even if it's just the cost to Canada Border Services Agency of screening for fake DVDs coming into the country, there are costs involved in that.

We heard from academic groups this afternoon that they're happy to pay for content, but it's difficult for them to do so. They don't want to pay twice for something. They don't want to bundle when they need one piece from it. I'm surprised that I've never heard people talking about the mechanisms for enforcing copyright and why there isn't a little thinking outside the box, realizing the difficulties distinguishing between out of the box and off the wall sometimes.

Why isn't there a simple registry of copyrights, copyright owners, so you can go there and say I want that book, I'm paying the fair price for that book? I want one poem from that book and I'll pay the fair price for that. Then it's simple, you know where to go and you know what you're going to pay for it.

By the way, that same mechanism could be used if you think you want to extend your copyright, you could do so through a registry like that. It might not be free. If you think your IP is worth thousands of dollars, there may be a cost to asking society to enforce your IP rights and the cost would go to the enforcement, of course.

My final point is the effect of cultural chill with copyright. There ought to be mechanisms in which I, as a documentary producer, for instance can produce a documentary about you at home and, by the way, you're watching television and maybe listening to some music and I shouldn't have to be worried about cutting all that stuff out.

Thank you.

The Chair: Thank you very much.

Now we're going to move to Lisa Macklem.

Go ahead.

Ms. Lisa Macklem (As an Individual): Good evening. Thank you for the opportunity to speak.

My name is Lisa Macklem. I am a Ph.D. student in the law faculty at the University of Western Ontario. I have a JD from Western with a concentration in intellectual property and information technology, a Master of Laws from Southwestern Law School in Los Angeles in entertainment and media law, and I have an MA in media studies, also from Western. I sit on the editorial board for the *Journal of Fandom Studies*, and I sit on the executive of the Ontario Bar Association section on entertainment, communications, and media law.

My dissertation focuses on digital content delivery, with a focus on the entertainment and media industries. Copyright is at the heart of my research.

i'd like to make three very brief points today. First, fair dealing should stand or be expanded from 2012 levels. Second, the duration of copyright should remain firm at the life of the author plus 50 years and third, notice and notice should stand.

Fair dealing is key to the continued support of innovation, creation, and the continued promotion of Canadian culture and artists. It is a key component to ensuring that Canadians have access to both the creation and enjoyment of our own culture. Any good democracy is founded on educated citizenry and fair dealing is vital to ensuring this. Institutions, such as Access Copyright, will argue that their revenues have gone down, but that does not have any impact on creators or publishers, as they would have you believe. Schools are paying databases for content. They are not simply offering that content for free. I would urge the board to look closely at such claims.

The duration of copyright should remain at its present level. There is no evidence to support an increase in revenue for the majority of works, past life plus 50. In fact, making works available makes them available to publishers at a lower cost. This ensures that lesser known works are still made available in smaller print runs and with additional current editorial comment. When works are available in the public domain, this stimulates further creation from the works by new creators, something copyright is meant to support, in addition to fair remuneration for the creator. Creators in Canada have an extensive funding network available to them. It is a very complex issue, as you rightly stated, with many solutions, rather than locking up works.

Notice and notice should remain as it is. It provides a fair way for creators to protect their works on the Internet, while still enabling access to justice. In a notice and takedown regime, innocent creators are forced to take expensive legal action to have their non-infringing works reposted, thus often stifling the creation of new works by fledgling creators.

As I have an extra minute, in regard to indigenous issues, I would also urge bringing in indigenous consultation to really get an understanding of how indigenous peoples view copyright and not simply imposing Canadian law upon them.

Thus far this year, I have presented at conferences in the United States, Canada, Dubai, China, and India. In every case, even the U. S., the Canadian system has been lauded as one of the best in the world and I'd hate to see that change.

Thank you very much.

● (1915)

The Chair: Thank you very much.

We're going to move to Jess Whyte.

Ms. Jess Whyte (As an Individual): Thanks. My name is Jess Whyte. I'm a digital preservation librarian. I work in digital preservation and curation. I'm also a member of the Digital Curation Institute and the Software Preservation Network.

I'm here because I want to talk about technical protection measures, or TPMs. Specifically I want to ask for an explicit legal exception in section 41 for researchers and non-profit libraries, archives, and museums to circumvent TPM for the purposes of long-term preservation, research, and access. I believe that any digital content, whether it be research data, an author's drafts, scientific software code, or an e-book, which is ensconced in TPM or DRM is unpreservable. I would not accept anything restricted by TPM or DRM into a preservation platform because I would consider it to be simply inaccessible within a few years' time.

I have three cases I hope will illustrate how TPMs inhibit my work. The first is a collection from the Thomas Fisher Rare Book Library, from Canadian author James Bacque. He wrote fiction and non-fiction works. Within his collection there was a box of five-and-a-quarter-inch floppy discs, backups for a draft for one of his novels. It was written using proprietary backup software by a company called Corefast. In other words, it was ensconced in TPM, and so because we do not have an exclusive exception to circumvent that TPM, that content remains inaccessible to researchers.

Another example is from the Engineering and Computer Science Library. We're currently working to migrate materials from the 1980s and 1990s that are on older formats like three-an—a-half- and five-and-a-quarter-inch floppy discs. A lot of that is software code. While we can get that off, because that code is compiled and restricted by TPM, we have no way to make it human-readable. We have no way to preserve it in a format that is human-readable and usable by, say, a researcher who is studying the history of certain software in Canada, or a researcher who wants to reproduce scientific results using that same software and wants to actually look at the software and see the source code and what it is actually doing in order to reproduce those research results.

Another case I have concerns an award-winning paper, "The Enkindling Reciter: E-Books in the Bibliographical Imagination", by Professor Alan Galey, at the University of Toronto. It highlights the barriers that technical protection measures put up for scholars. In this work, Dr. Galey sought to conduct a full bibliographic analysis of various states and editions of Canadian author Johanna Skibsrud's *The Sentimentalists*. However, as Dr. Galey points out in his work, DRM encryption means that when there is an attempt to read any of the HTML files—

● (1920)

The Chair: I'm sorry.

Ms. Jess Whyte:—you can't access it.

The Chair: That was very interesting. Thank you.

We have Barbara Spurll.

Ms. Barbara Spurll (As an Individual): Good evening. Thank you for this opportunity to speak. It's an issue very close to my heart.

My name is Barbara Spurll. I've been a professional illustrator for over three decades. Over the years, I have created hundreds of illustrations for the educational publishing sector. This type of work, though, has slowed to a trickle for me since 2012. Since the addition of education as allowable under fair dealing, my royalties from access copyright have been reduced to one-fifth, that's 20%, of what they were in 2010-11.

Besides the obvious loss of an income stream for me personally as a parent and grandparent, my other concern is that there is less, or there is going to be less, Canadian content in Canadian schools and universities as a direct result of lost remuneration for the publishers and their creators.

I'm also the president of the Toronto chapter of CAPIC, the Canadian Association of Professional Image Creators. I hear from other illustrator members that they no longer make a living from their illustration alone, and that they now need to subsidize their income with jobs such as school visits, teaching, renovation and construction, bartending, selling real estate, you name it. These are hard-working professionals striving to create excellence in their crafts.

The loss of royalties from educational publishing and printing is yet another blow to image creators and directly impacts their livelihoods as creators.

As an illustrator, I am a content creator. I see a disturbing trend of everyone expecting content for free. That business would exploit the letter of the law at the expense of the spirit of the law is disheartening, and I see colleges and universities as somewhat like businesses. Pay for content; pay the creator. Please, let's not kill the geese that lay the golden eggs.

Thank you.

The Chair: Thank you very much.

Leslie Dema.

Ms. Leslie Dema (President, Broadview Press, As an Individual): Hello, everyone. My name is Leslie Dema, and I'm President of Broadview Press, an independent Canadian-owned publisher of undergraduate college and university humanities textbooks.

I think everyone in the room today would like all students to have access to affordable, flexible, and high-quality reading materials for their courses, just as we would like them to have access to affordable tuition and high-quality professors. We don't, however, ask our professors to teach for free for 10% of the time or the librarians to work for free 10% of the time; nor does it make sense to ask authors or publishers to work for free 10% of the time.

Since education was added to fair dealing in 2012, and since the Copyright Board has failed to enforce the tariffs that they impose, that is exactly what authors and publishers have been doing. We are being forced to subsidize the education system. For the publishing industry, that means fewer jobs and less money to invest in new Canadian works.

The rise of copying as a substitute for the purchase of original works has caused a steep decline in Canadian sales revenue at Broadview Press. Fifty-five per cent of our revenue came from Canadian sales in 2013, and only 41% of our revenue came from Canadian sales in 2017.

We would prefer to continue being able to develop books specifically for the Canadian market, but in recent years we've been forced to develop more projects for the American market to compensate for our declining Canadian sales. When students are deprived of access to high-quality reading materials, their learning outcomes are damaged. This fact indicates that the books they study from are very valuable to their education, just as their teachers are.

The answer to this problem is not to cut off compensation to authors and publishers, thereby damaging their ability to produce new works in the future. The system prior to 2012, in which a collective licensing agency was able to negotiate convenient and affordable access to published works for classroom use, is more sustainable for the education ecosystem as a whole, supports authors and publishers, and will contribute more to the education of young Canadians than we cost.

Thank you.

● (1925)

The Chair: Thank you very much.

Andy Turnbull.

Mr. Andy Turnbull (As an Individual): Actually, I guess I'm here by mistake, because I didn't pick up on the copyright thing. I thought this was on science and tech. But as long as I'm here, I want to reinforce Dr. Greer's comment about the schools. I have had newspaper series ripped off by professors who chose to pass out photocopies to everybody in their class and I have had school courses that I proposed and that I wanted to teach ripped off by schools that decided they wanted to hire someone else to teach my course, which I had planned.

I think we need to teach the schools something about copyright, and I won't wait for you to lift your hands.

The Chair: Thank you very much.

Our last speaker is Ann Brocklehurst.

Ms. Ann Brocklehurst (As an Individual): That is my name. If you Google it and then scroll down to the related searches, one thing you'll see is "dark ambition pdf".*Dark Ambition* is a book I wrote. I'm a journalist and author. That's telling you where you can go to download my book for free.

PDF, then: go get my book for free, and I won't get any money. It's very popular. You can find that with almost every book nowadays.

On the day my book was published, a Facebook group devoted to discussing this murder posted pirated copies—PDFs, EPUBs—and encouraged everyone to go and get it, and they did. When I told them that what they were doing was illegal, they laughed at me.

When I reported it to my publisher, Penguin Random House, they didn't really care, because I'm a small author in Canada and they're Penguin Random House.

When I reported it to Facebook, it was like beating my head up against the wall. They did take the illegal copies of the book out of the Facebook group, but they didn't close it.

My point here is—I'm not a lawyer—that it's very expensive to sue for copyright. There's absolutely no disincentive now for copyright pirates. If I write an article about it, which I could do, I'm just spreading the word: "Hey, you can get free PDFs of my book and any author's works."

I'm lucky, because someone saved a screen shot of them saying, "Hah, we have her book; let's distribute it for free." I'm going to small claims court and I'm going to sue the people who did this, which is a tactic some authors and content creators have successfully used to be reimbursed, because there is no disincentive for the pirates and thieves who are stealing our intellectual property. The legal route is not an option: it costs too much to have a lawyer.

In the States, there have been talks about having a kind of small claims court for copyright and some sort of system that works for creators like me to recoup our money from the pirates. That's what I'd like to see thought about in Canada, as well as some sort of system to find out who is doing this.

I know you hear a lot of civil libertarians complain, but if people are downloading books, I think we should have some access to the IP addresses and be able to go after the individuals as well as the organizations.

That's what I want to say: how do people like me, who have no means now, get our money back?

Do something about the thieves.

● (1930)

The Chair: Thank you very much.

That will bring us to a close for the evening.

As I've said before, all along this week, this is a study that's going to take us about a year to complete because there are so many different parts to it. The purpose of the road trip was to meet individuals, and that's exactly what we've been doing.

The work has been very good; it's coming along. We're getting a really good understanding of the challenges and the perils and pitfalls of copyright. One could write a book about it; it's actually quite interesting.

Are there any takers? I probably wouldn't make any money from it.

Some hon. members: Oh, oh!

The Chair: On that note, I encourage you to follow us on our website. Google "INDU home", and that will take you to our website. You can follow along, with every meeting we have, what we call "the blues". They come up and, word for word, tell you the questions we've been asking and what is said in the presentations, so follow along.

Thank you all very much for coming tonight. We appreciate it.

We're adjourned.

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